IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WP(C).No. 9486 of 2007(D)

RCA.12/2006 of RENT CONTROL APPELLATE AUTHORITY, PARAVUR
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PETITIONERS:
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1. **MODY, S/O. THOMAS, CHENGAN (H), PERAMBRA DESOM, KANAKAMALA, KODAKARA VILLAGE, MUKUNDAPURAM TALUK, THRISSUR DISTRICT, KANAKAMALA P.O., PIN-680 684, REP. BY HIS P/A HOLDER ANTONY, S/O. C.T.ANTONY, CHENGAN HOUSE, PERAMBRA DESOM, KANAKAMALA, KODAKARA VILLAGE, THRISSUR.**

2. **ANTONY, S/O. C.T.ANTONY, CHENGAN HOUSE, PERAMBRA DESOM, KANAKAMALA, KODAKARA VILLAGE, MUKUNDAPURAM TALUK, THRISSUR DISTRICT, NOW BUSINESS UNDER THE NAME SELECTIONS IN THE BUILDING BEARING MUNCIPAL DOOR NO.XX/147, ANGAMALY.**

3. **M.E.JACOB, S/O. EATAPPANESE, MANAVALAN HOUSE, KUZHOORKARA, THRUMKULAM VILLAGE, MUKUNDAPURAM TALUK, KUZHOOR, PIN-680 742, REP. BY HIS POWER OF ATTORNEY HOLDER, ANTONY, S/O. C.T.ANTONY, CHENGAN HOUSE, PERAMBRA DESOM, KANAKAMALA, KODAKARA VILLAGE, THRISSUR.**

BY ADV. SRI.D.KISHORE
SRI.LIJI.J.VADAKEDOM

RESPONDENTS:
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1. **JOSE, S/O. JOSEPH, KIZHAKKUMTHALA HOUSE, ANGAMALY KARA, ANGAMALY P.O.**

2. CICILY JOSE, W/O. JOSE,
ANGAMALY KARA, ANGAMALY P.O.

BY ADV. SRI.GEORGE ABRAHAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).9486/2007

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE JUDGMENT DATED 12.4.2006 BEFORE THE RENT CONTROL COURT, ALUVA.

EXT.P2: COPY OF THE PETITION IN R.C.A.NO.12/2006 DATED 4.1.2007.

EXT.P3: COPY OF THE OBJECTION SUBMITTED BY THE PETITIONERS HEREIN IN I.A.20/2006 IN RCA.12/2006 BEFORE THE RCA.AUTHORITY, NORTH PARAVUR.

EXT.P4: COPY OF THE ORDER DATED 21.2.2007 IN I.A.NO.20/07 IN RCA.12/2006 BEFORE THE RENT CONTROL APPELLATE AUTHORITY, N.PARAVUR.

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

W.P.(C).NO.9486 OF 2007 (D)

Dated this the 6th day of June, 2007

J U D G M E N T

KOSHY,J.

Respondents in this case filed an application for evicting writ petitioner tenant on various grounds which included grounds under Section 11 (2) (b) of the Kerala Building (Lease and Rent Control Act, 1965). Rent control court rejected the application. Respondents then filed the appeal. During the pendency of the appeal, petition under Section 12 was filed contending that there were arrears of rent and order was passed under Section 12 for depositing the admitted arrears. The only question challenged in this writ petition is that the land lord has no right to file an application under Section 12 when his application before the Rent control court was dismissed. Plain reading of Section 12 (1) shows that it will be applicable if tenant is contesting an application under Section 11 before the Rent control court or appeal proceedings are

initiated by the tenant under Section 18 of the Act against any order on its application. Therefore an order under Section 12 by the appellate authority is permissible only if tenants file an appeal under Section 18 of the Act against any order passed on the application made under Section 11. Hence it is clear that in an appeal proceedings against an order dismissing the eviction application, the landlord has no right to file a petition under Section 12. It is true that Full Bench of this Court in ***Kurien v. Saramma Chacko (1964 K.L.T. 1)*** held that the expression 'Rent control court' under Section 11 (2) (b) includes both the appellate and revisional authorities. In Section 12 it is clearly stated that an application can be filed only if landlord files a petition under Section 11 and the matter is pending in the Rent control court or if eviction is ordered by the Rent Control court and appeal filed by the tenant is pending before the appellate authority. Jurisdiction of the Rent Control Court and Appellate Authority under Section 12 are clearly mentioned in Section 12 itself. There is no provision enabling the landlord to file a petition under Section 12, when landlord files an appeal against an order rejecting his claim for eviction as held

by the Division Bench of this Court in ***Mary Been John and another v. Addl. District Court and others (1996 (2) K.L.T. 955)***. We follow the above decision and hold that when petition for eviction is rejected by the Rent Control Court, landlord who filed the appeal cannot file a petition under Section 12. Hence impugned order is set aside. Parties are free to take up all their contentions in the appeal pending before the Appellate court. This writ petition is allowed.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO. OF 2006 ()

J U D G M E N T

1st June, 2007